



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

106065

In Response Refer To: 3HW10

Mr. Walter Kosak  
Kaminski Brothers, Inc.  
RD 4, Box 226  
Pittston, PA 18640

SEP 01 1988

Re: Butler Mine Tunnel Site  
Dupont Subsidence Control Project

Dear Mr. Kosak:

On August 30, 1988, representatives from the U.S. Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Resources (PADER) examined potential locations at which exploratory boreholes might be drilled into the Butler Mine complex. It is EPA's intent to install exploratory boreholes into the Butler and Heidelberg Mines for the purpose of allowing EPA and PADER to obtain water samples and water level information. EPA and PADER can then determine if the activities of the subsidence control project may act to trigger a release from the Butler Tunnel before a release actually occurs. EPA and PADER agree that the Dupont Area Mine Subsidence Control Project could commence after the exploratory boreholes are installed by GE Ray Construction Company and sufficient baseline data is collected and analyzed by EPA and PADER. Sampling and monitoring conducted by EPA and PADER would continue at these and other locations throughout the mine subsidence control project to indicate if a release from the Tunnel could occur.

Section 107(d)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(d)(1), provides that:

"...[N]o person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an on-scene coordinator appointed under such plans, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as a result of negligence on the part of such person."

AR300573

As the Remedial Project Manager under the NCP, I have the same duties at remedial sites that the on-scene coordinator has at removal sites, and, therefore have the responsibility for directing the remedial response at the site. (See 40 C.F.R. Sections 300.33, 30068.). Since the installation of the boreholes would better enable us to design and implement the RI/FS discussed in the NCP, your granting the access in accordance with my directions results in rendering assistance in accordance with the NCP and thus you are protected from any CERCLA liability that might arise from the drilling and sampling of the boreholes in accordance with Section 107(d)(1) of CERCLA as above quoted.

To install the necessary boreholes and collect the baseline data it will be necessary for GE Ray Company to come onto your property and drill those boreholes. I, as the Site's designated Remedial Project Manager, am therefore directing you to assist us in this task by permitting GE Ray Company to drill the boreholes on your property and permitting EPA, PADER, and their authorized representatives access to your property to collect the needed baseline data.

EPA was primarily concerned about withdrawing water containing wastes from the Butler Mine and discharging it into the Heidelberg Mine. EPA has no objection to GE Ray Company installing the exploratory boreholes into the Butler Mine provided that GE Ray company does not withdraw water from the boreholes. Installation of the exploratory boreholes at the direction of and under the supervision of EPA will not subject your company to joint and several liability under CERCLA.

If you have any questions regarding this matter or wish to discuss this further, I may be contacted at (215) 597-3166.

Sincerely,

*Michael Towle*

Michael Towle,  
Remedial Project Manager  
PA CERCLA Remedial Enforcement Section

cc: Donald Rosenbarger, GE Ray  
Michael Ferko, PADER  
Ginny Davison, PADER

AR300574